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DELLA REPUBBLICA ITALIANA

PARTE PRIMA ROMA - Lunedì, 7 novembre 1966 SI PUBBLICA TUTTI I GIORNI MENO I FESTIVI

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LEGGE 4 ottobre 1966 n. **907.**

Ratifica ed esecuzione dell'Accordo che istituisce la Banca Asiatica di Sviluppo adottato a Manila il 4 dicembre 1965.

LEGGI E DECRETI

LEGGE 4 ottobre 1966, n. 907.

Ratifica ed esecuzione dell'Accordo che istituisce la Banca Asiatica di Sviluppo adottato a Manila il 4 dicembre 1965.

La Camera dei deputati ed il Senato della Repubblica hanno approvato;

IL PRESIDENTE DELLA REPUBBLICA

PROMULGA

la seguente legge:

Art. 1.

Il Presidente della Repubblica è autorizzato a ratificare l'Accordo che istituisce la Banca Asiatica di Sviluppo, adottato a Manila il 4 dicembre 1965.

Art. 2.

Piena ed intera esecuzione è data all'Accordo indicato nell'articolo precedente, a decorrere dalla sua entrata in vigore, in conformità all'articolo 65 dell'Accordo stesso.

Art. 3.

La quota della partecipazione italiana al capitale della Banca Asiatica di Sviluppo, indicata nell'Annesso *A* dell'Accordo, parte *B*, è elevata a 20 milioni di dollari U.S.A.

Art. 4.

Al fine di effettuare i versamenti relativi alla quota di partecipazione dell'Italia al capitale della Banca Asiatica, il Ministro per il tesoro è autorizzato ad avvalersi dell'Ufficio Italiano dei Cambi.

Art. 5.

In corrispondenza di ciascun versamento effettuato alla Banca Asiatica da parte dell'Ufficio Italiano dei Cambi, il Ministro per il tesoro è autorizzato a rilasciare all'Istituto speciali certificati di credito, fino alla concorrenza del contro valore in lire italiane del predetto importo complessivo di 20 milioni di dollari U.S.A.

Detti certificati sono ammortizzabili in dieci anni a decorrere dal 1° gennaio dell'anno successivo a quello della loro emissione e fruttano l'interesse dell'1 per cento annuo, pagabile posticipatamente al 1° gennaio e al 1° luglio di ogni anno.

Ai certificati medesimi, ai loro interessi ed agli atti ad essi relativi sono estese le esenzioni fiscali ed agevolazioni tributarie di cui agli articoli 3 e 8 della legge 19 dicembre 1952, n. 2356.

Tali certificati sono equiparati a tutti gli effetti ai titoli di debito pubblico e godono delle garanzie, privilegi e benefici ad essi concessi.

Il Ministro per il tesoro determinerà con proprio decreto i tagli e le caratteristiche dei certificati ed il relativo piano di ammortamento.

Il Ministro per il tesoro è altresì autorizzato a disporre, con separato decreto, la corresponsione dell'interesse dell'1 per cento annuo sulle somme versate dall'Ufficio Italiano dei Cambi alla Banca Asiatica, maturato durante il periodo compreso tra la data di ciascun versamento da parte dell'Istituto stesso e quella della emissione dei relativi certificati.

Art. 6.

Al regolamento dei rapporti nascenti in esecuzione della presente legge tra il Ministero del tesoro e l'Ufficio Italiano dei Cambi si provvederà mediante convenzione da stipularsi dal Ministro per il tesoro con il menzionato Istituto finanziario italiano.

Art. 7.

All'onere relativo al pagamento degli interessi di cui al precedente articolo 5, valutato per l'anno finanziario 1966 in lire 6.250.000, si farà fronte con un'aliquota delle maggiori entrate derivanti dall'applicazione del decreto-legge 14 dicembre 1965, n. 1334, convertito nella legge 9 febbraio 1966, n. 21, concernente l'importazione delle banane fresche.

Art. 8.

Il Ministro per il tesoro è autorizzato ad apportare, con propri decreti, in ciascun esercizio, le variazioni di bilancio occorrenti per l'attuazione della presente legge.

Art. 9.

La presente legge entra in vigore il giorno successivo a quello della sua pubblicazione nella *Gazzetta Ufficiale*.

La presente legge, munita del sigillo dello Stato, sarà inserta nella Raccolta ufficiale delle leggi e dei decreti della Repubblica Italiana. E' fatto obbligo a chiunque spetti di osservarla e di farla osservare come legge dello Stato.

Data a Roma, addì 4 ottobre 1966

SARAGAT

MORO — FANFANI — REALE — PIERACCINI — PRETI — COLOMBO — TOLLOY

Visto, *il Guardasigilli*: REALE

Accordo che istituisce la Banca Asiatica di Sviluppo
Manila, 4 dicembre 1965

AGREEMENT ESTABLISHING THE ASIAN DEVELOPMENT BANK

The contracting parties

Considering the importance of closer economic co-operation as a means for achieving the most efficient utilization of resources and for accelerating the economic development of Asia and the Far East;

Realizing the significance of making additional development financing available for the region by mobilizing such funds and other resources both from within and outside the region, and by seeking to create and foster conditions conducive to increased domestic savings and greater flow of development funds into the region;

Recognizing the desirability of promoting the harmonious growth of the economies of the region and the expansion of external trade of member countries;

Convinced that the establishment of a financial institution that is Asian in its basic character would serve these ends;

Have agreed to establish hereby the Asian Development Bank (hereinafter called the "Bank") which shall operate in accordance with the following.

ARTICLES OF AGREEMENT

CHAPTER I. — PURPOSE, FUNCTIONS AND MEMBERSHIP

Article 1
Purpose

The purpose of the Bank shall be to foster economic growth and co-operation in the region of Asia and the Far East (hereinafter referred to as the "region") and to contribute to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually. Whereever used in this Agreement, the terms "region of Asia and the Far East" and "region" shall comprise the territories of Asia and the Far East included in the Terms of Reference of the United Nations Economic Commission for Asia and the Far East.

Article 2
Functions

To fulfil its purpose, the Bank shall have the following functions:

(i) to promote investment in the region of public and private capital for development purposes;

(ii) to utilize the resources at its disposal for financing development of the developing member countries in the region, giving priority to those regional, sub-regional as well as national projects and programmes which will contribute most effectively to the harmonious economic growth of the region as a whole, and having special regard to the needs of the smaller or less developed member countries in the region;

(iii) to meet requests from members in the region to assist them in the coordination of their development policies and plans with a view to achieving better utilization of their resources, making their economies more complementary, and promoting the orderly expansion of their foreign trade, in particular, intra-regional trade;

(iv) to provide technical assistance for the preparation, financing and execution of development projects and programmes, including the formulation of specific project proposals;

(v) to co-operate, in such manner as the Bank may deem appropriate, within the terms of this Agreement, with the United Nations, its organs and subsidiary bodies including, in particular, the Economic Commission for Asia and the Far East, and with public international organizations and other international institutions, as well as national entities whether public or private, which are concerned with the investment of development funds in the region, and to interest such institutions and entities in new opportunities for investment and assistance; and

(vi) to undertake such other activities and provide such other services as may advance its purpose.

Article 3
Membership

1. Membership in the Bank shall be open to: (i) members and associate members of the United Nations Economic Commission for Asia and the Far East; and (ii) other regional countries and non-regional developed countries which are members of the United Nations or of any of its specialized agencies.

2. Countries eligible for membership under paragraph 1 of this Article which do not become members in accordance with Article 64 of this Agreement may be admitted, under such terms and conditions as the Bank may determine, to membership in the Bank upon the affirmative vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.

3. In the case of associate members of the United Nations Economic Commission for Asia and the Far East which are not responsible for the conduct of their international relations, application for membership in the Bank shall be presented by the member of the Bank responsible for the international relations of the applicant and accompanied by an undertaking by such member that, until the applicant itself assumes such responsibility, the member shall be responsible for all obligations that may be incurred by the applicant by reason of admission to membership in the Bank and enjoyment of the benefits of such membership. "Country" as used in this Agreement shall include a territory which is an associate member of the United Nations Economic Commission for Asia and the Far East.

CHAPTER II. — CAPITAL

Article 4
Authorized capital

1. The authorized capital stock of the Bank shall be one billion dollars ($1,000,000,000) in terms of United States dollars of the weight and fineness in effect on 31 January 1966. The dollar wherever referred to in this Agreement shall be understood as being a United States dollar of the above value. The authorized capital stock shall be divided into one hundred thousand (100,000) shares having a par value of ten thousand dollars ($10,000) each, which shall be available for subscription only by members in accordance with the provisions of Article 5 of this Agreement.

2. The original authorized capital stock shall be divided into paid-in shares and callable shares. Shares having an aggregate par value of five hundred million dollars ($500,000,000) shall be paid-in shares, and shares having an aggregate par value of five hundred million dollars ($500,000,000) shall be callable shares.

3. The authorized capital stock of the Bank may be increased by the Board of Governors, at such time and under such terms and conditions as it may deem advisable, by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.

Article 5

Subscription of shares

1. Each member shall subscribe to shares of the capital stock of the Bank. Each subscription to the original authorized capital stock shall be for paid-in shares and callable shares in equal parts. The initial number of shares to be subscribed by countries which become members in accordance with Article 64 of this Agreement shall be that set forth in Annex A hereof. The initial number of shares to be subscribed by countries which are admitted to membership in accordance with paragraph 2 of Article 3 of this Agreement shall be determined by Board of Governors; provided, however, that no such subscription shall be authorized which would have the effect of reducing the percentage of capital stock held by regional members below sixty (60) per cent of the total subscribed capital stock.

2. The Board of Governors shall at intervals of not less than five (5) years review the capital stock of the Bank. In case of an increase in the authorized capital stock, each member shall have a reasonable opportunity to subscribe, under such terms and conditions as the Board of Governors shall determine, to a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total subscribed capital stock immediately prior to such increase; provided, however, that the foregoing provision shall not apply in respect of any increase or portion of an increase in the authorized capital stock intended solely to give effect to determinations of the Board of Governors under paragraphs 1 and 3 of this Article. No member shall be obligated to subscribe to any part of an increase of capital stock.

3. The Board of Governors may, at the request of a member, increase the subscription of such member on such terms and conditions as the Board may determine; provided, however, that no such increase in the subscription of any member shall be authorized which would have the effect of reducing the percentage of capital stock held by regional members below sixty (60) per cent of the total subscribed capital stock. The Board of Governors shall pay special regard to the request of any regional member having less than six (6) per cent of the subscribed capital stock to increase its proportionate share thereof.

4. Shares of stock initially subscribed by members shall be issued at par. Other shares shall be issued at par unless the Board of Governors by a vote of a majority of the total number of Governors, representing a majority of the total voting power of the members, decides in special circumstances to issue them on other terms.

5. Shares of stock shall not be pledged or encumbered in any manner whatsoever, and they shall not be transferable except to the Bank in accordance with Chapter VII of this Agreement.

6. The liability of the members on shares shall be limited to the unpaid portion of their issue price.

7. No member shall be liable, by reason of its membership, for obligations of the Bank.

Article 6

Payment of subscriptions

1. Payment of the amount initially subscribed by each Signatory to this Agreement which becomes a member in accordance with Article 64 to the paid-in capital stock of the Bank shall be made in five (5) instalments, of twenty (20) per cent each of such amount. The first instalment shall be paid by each member within thirty (30) days after entry into force of this Agreement, or on or before the date of deposit on its behalf of its instrument of ratification or acceptance in accordance with paragraph 1 of Article 64, whichever is later. The second instalment shall become due one (1) year from the entry into force of this Agreement. The remaining three instalments shall each become due successively one (1) year from the date on which the preceding instalment becomes due.

2. Of each instalment for the payment of initial subscription to the original paid-in capital stock:

(a) fifty (50) per cent shall be paid in gold or convertible currency; and

(b) fifty (50) per cent in the currency of the member.

3. The Bank shall accept from any member promissory notes or other obligations issued by the Government of the member, or by the depository designated by such member, in lieu of the amount to be paid in the currency of the member pursuant to paragraph 2 (b) of this Article, provided such currency is not required by the Bank for the conduct of its operations. Such notes or obligations shall be non-negotiable, non-interest-bearing, and payable to the Bank at par value upon demand. Subject to the provisions of paragraph 2 (ii) of Article 24, demands upon such notes or obligations payable in convertible currencies shall, over reasonable periods of time, be uniform in percentage on all such notes or obligations.

4. Each payment of a member in its own currency under paragraph 2 (b) of this Article shall be in such amount as the Bank, after such consultation with the International Monetary Fund as the Bank may consider necessary and utilizing the par value established with the International Monetary Fund, if any, determines to be equivalent to the full value in terms of dollars of the portion of the subscription being paid. The initial payment shall be in such amount as the member considers appropriate hereunder but shall be subject to such adjustment, to be effected within ninety (90) days of the date on which such payment was due, as the Bank shall determine to be necessary to constitute the full dollar equivalent of such payment.

5. Payment of the amount subscribed to the callable capital stock of the Bank shall be subject to call only as and when required by the Bank to meet its obligations incurred under sub-paragraphs (ii) and (iv) of Article 11 on borrowings of funds for inclusion in its ordinary capital resources or on guarantees chargeable to such resources.

6. In the event of the call referred to in paragraph 5 of this Article, payment may be made at the option of the member in gold, convertible currency or in the currency required to discharge the obligations of the Bank for the purpose of which the call is made. Calls on unpaid subscriptions shall be uniform in percentage on all callable shares.

7. The Bank shall determine the place for any payment under this Article, provided that, until the inaugural meeting of its Board of Governors, the payment of the first instalment referred to in paragraph 1 of this Article shall be made to the Secretary-General of the United Nations, as Trustee for the Bank.

Article 7

Ordinary capital resources

As used in this Agreement, the term « ordinary capital resources » of the Bank shall include the following:

(i) authorized capital stock of the Bank, including both paid-in and callable shares, subscribed pursuant to Article 5 of this Agreement, except such part thereof as may be set aside into one or more Special Funds in accordance with paragraph 1 (i) of Article 19 of this Agreement;

(ii) funds raised by borrowings of the Bank by virtue of powers conferred by sub-paragraph (i) of Article 21 of this Agreement, to which the commitment to calls provided for in paragraph 5 of Article 6 of this Agreement is applicable;

(iii) funds received in repayment of loans or guarantees made with the resources indicated in (i) and (ii) of this Article;

(iv) income derived from loans made from the aforementioned funds or from guarantees to which the commitment to calls set forth in paragraph 5 of Article 6 of this Agreement is applicable; and

(v) any other funds or income received by the Bank which do not form part of its Special Funds resources referred to in Article 20 of this Agreement.

CHAPTER III. — OPERATIONS

Article 8

Use of resources

The resources and facilities of the Bank shall be used exclusively to implement the purpose and functions set forth respectively in Articles 1 and 2 of this Agreement.

Article 9

Ordinary and special operations

1. The operations of the Bank shall consist of ordinary operations and special operations.

2. Ordinary operations shall be those financed from the ordinary capital resources of the Bank.

3. Special operations shall be those financed from the Special Funds resources referred to in Article 20 of this Agreement.

Article 10

Separation of operations

1. The ordinary capital resources and the Special Funds resources of the Bank shall at all times and in all respects be held, used, committed, invested or otherwise disposed of entirely separate from each other. The financial statements of the Bank shall show the ordinary operations and special operations separately.

2. The ordinary capital resources of the Bank shall under no circumstances be charged with, or used to discharge, losses or liabilities arising out of special operations or other activities for which Special Funds resources were originally used or committed.

3. Expenses appertaining directly to ordinary operations shall be charged to the ordinary capital resources of the Bank. Expenses appertaining directly to special operations shall be charged to the Special Funds resources. Any other expenses shall be charged as the Bank shall determine.

Article 11

Recipients and methods of operation

Subject to the conditions stipulated in this Agreement, the Bank may provide or facilitate financing to any member, or any agency, instrumentality or political subdivision thereof, or any entity or enterprise operating in the territory of a member, as well as to international or regional agencies or entities concerned with economic development of the region. The Bank may carry out its operations in any of the following ways:

(i) by making or participating in direct loans with its unimpaired paid-in capital and, except as provided in Article 17 of this Agreement, with its reserves and undistributed surplus; or with the unimpaired Special Funds resources;

(ii) by making or participating in direct loans with funds raised by the Bank in capital markets or borrowed or otherwise acquired by the Bank for inclusion in its ordinary capital resources;

(iii) by investment of funds referred to in (i) and (ii) of this Article in the equity capital of an institution or enterprise, provided no such investment shall be made until after the Board of Governors, by a vote of a majority of the total number of Governors, representing a majority of the total voting power of the members shall have determined that the Bank is in a position to commence such type of operations; or

(iv) by guaranteeing, whether as primary or secondary obligor, in whole or in part, loans for economic development participated in by the Bank.

Article 12

Limitations on ordinary operations

1. The total amount outstanding of loans, equity investments and guarantees made by the Bank in its ordinary operations shall not at any time exceed the total amount of its unimpaired subscribed capital, reserves and surplus included in its ordinary capital resources, exclusive of the special reserve provided for by Article 17 of this Agreement and other reserves not available for ordinary operations.

2. In the case of loans made with funds borrowed by the Bank to which the commitment to calls provided for by paragraph 5 of Article 6 of this Agreement is applicable, the totale amount of principal outstanding and payable to the Bank in a specific currency shall not at any time exceed the total amount of the principal of outstanding borrowings by the Bank that are payable in the same currency.

3. In the case of funds invested in equity capital out of the ordinary capital resources of the Bank, the total amount invested shall not exceed ten (10) per cent of the aggregate amount of the unimpaired paid-in capital stock of the Bank actually paid up at any given time together with the reserves and surplus included in its ordinary capital resources, exclusive of the special reserve provided for in Article 17 of this Agreement.

4. The amount of any equity investment shall not exceed such percentage of the equity capital of the entity or enterprise concerned as the Board of Directors shall in each specific case determine to be appropriate. The Bank shall not seek to obtain by such an investment a controlling interest in the entity or enterprise concerned, except where necessary to safeguard the investment of the Bank.

Article 13

Provision of currencies for direct loans

In making direct loans or participating in them, the Bank may provide financing in any of the following ways:

(i) by furnishing the borrower with currencies other than the currency of the member in whose territory the project concerned is to be carried out (the latter currency hereinafter to be called « local currency »), which are necessary to meet the foreign exchange costs of such project; or

(ii) by providing financing to meet local expenditures on the project concerned, where it can do so by supplying local currency without selling any of its holdings in gold or convertible currencies. In special cases when, in the opinion of the Bank, the project causes or is likely to cause undue loss or strain on the balance of payments of the member in whose territory the project is to be carried out, the financing granted by the Bank to meet local expenditures may be provided in currencies other than that of such member; in such cases, the amount of the financing granted by the Bank for this purpose shall not exceed a reasonable portion of the total local expenditure incurred by borrower.

Article 14

Operating principles

The operations of the Bank shall be conducted in accordance with the following principles:

(i) The operations of the Bank shall provide principally for the financing of specific projects, including those forming part of a national, sub-regional or regional development programme. They may, however, include loans to, or guarantees of loans made to, national development banks or other suitable entities, in order that the latter may finance specific development projects whose individual financing requirements are not, in the opinion of the Bank, large enough to warrant the direct supervision of the Bank;

(ii) In selecting suitable projects, the Bank shall always be guided by the provisions of paragraph (ii) of Article 2 of this Agreement;

(iii) The Bank shall not finance any undertaking in the territory of a member if that member objects to such financing;

(iv) Before a loan is granted, the applicant shall have submitted an adequate loan proposal and the President of the Bank shall have presented to the Board of Directors a written report regarding the proposal, together with his recommendations, on the basis of a staff study;

(v) In considering an application for a loan or guarantee, the Bank shall pay due regard to the ability of the borrower to obtain financing or facilities elsewhere on terms and conditions that the Bank considers reasonable for the recipient, taking into account all pertinent factors;

(vi) In making or guaranteeing a loan, the Bank shall pay due regard to the prospects that the borrower and its guarantor, if any, will be in a position to meet their obligations under the loan contract;

(vii) In making or guaranteeing a loan, the rate of interest, other charges and the schedule for repayment of principal shall bre such as are, in the opinion of the Bank, appropriate for the loan concerned;

(viii) In guaranteeing a loan made by other investors, or in underwriting the sale of securities, the Bank shall receive suitable compensation for its risk;

(ix) The proceeds of any loan, investment or other financing undertaken in the ordinary operations of the Bank or with Special Funds established by the Bank pursuant to paragraph 1 (i) of Article 19, shall be used only for procurement in member countries of goods and services produced in member countries, except in any case in which the Board of Directors, by a vote of the Directors representing not less than two-thirds of the total voting power of the members, determines to permit procurement in a non-member country or of goods and services produced in a non-member country in special circumstances making such procurement appropriate, as in the case of a non-member country in which a significant amount of financing has been provided to the Bank;

(x) In the case of a direct loan made by the Bank, the borrower shall be permitted by the Bank to draw its funds only to meet expenditures in connexion with the project as they are actually incurred;

(xi) The Bank shall take the necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank are used only for the purposes for which the loan was granted and with due attention to considerations of economy and efficiency;

(xii) The Bank shall pay due regard to the desirability of avoiding a disproportionate amount of its resources being used for the benefit of any member;

(xiii) The Bank shall seek to maintain reasonable diversification in its investments in equity capital; it shall not assume responsibility for managing any entity or enterprise in which it has an investment, except where necessary to safeguard its investments; and

(xiv) The Bank shall be guided by sound banking principles in its operations.

Article 15

Terms and conditions for direct loans and guarantees

1. In the case of direct loans made or participated in or loans guaranteed by the Bank, the contract shall establish, in conformity with the operating principles set forth in Article 14 of this Agreement and subject to the other provisions of this Agreement, the terms and conditions for the loan or the guarantee concerned, including those relating to payment of principal, interest and other charges, maturities, and dates of payment in respect of the loan, or the fees and other charges in respect of the guarantee, respectively. In particular, the contract shall provide that, subject to paragraph 3 of this Article, all payments to the Bank under the contract shall be made in the currency loaned, unless, in the case of a direct loan made or a loan guaranteed as part of special operations with funds provided under paragraph 1 (ii) of Article 19, the rules and regulations of the Bank provide otherwise. Guarantees by the Bank shall also provide that the Bank may terminate its liability with respect to interest if, upon default by the borrower and the guarantor, if any, the Bank offers to purchase, at par and interest accrued to a date designated in the offer, the bonds or other obligations guaranteed.

2. Where the recipient of loans or guarantees of loans is not itself a member, the Bank may, when it deems it advisable, require that the member in whose territory the project concerned is to be carried out, or a public agency or any instrumentality of that member acceptable to the Bank, guarantee the repayment of the principal and the payment of interest and other charges on the loan in accordance with the terms thereof.

3. The loan or guarantee contract shall expressly state the currency in which all payments to the Bank thereunder shall be made. At the option of the borrower, however, such payments may always be made in gold or convertible currency.

Article 16

Commission and fees

1. The Bank shall charge, in addition to interest, a commission on direct loans made or participated in as part of its ordinary operations. This commission, payable periodically, shall be computed on the amount outstanding on each loan or participation and shall be at the rate of not less than one (1) per cent per annum, unless the Bank, after the first five (5) years of its operations, decides to reduce this minimum rate by a two-thirds majority of its members, representing not less than three-fourths of the total voting power of the members.

2. In guaranteeing a loan as part of its ordinary operations, the Bank shall charge a guarantee fee, at a rate determined by the Board of Directors, payable periodically on the amount of the loan outstanding.

3. Other charges of the Bank in its ordinary operations and any commission, fees or other charges in its special operations shall be determined by the Board of Directors.

Article 17

Special reserve

The amount of commissions and guarantee fees received by the Bank pursuant to Article 16 of this Agreement shall be set aside as a special reserve which shall be kept for meeting liabilities of the Bank in accordance with Article 18 of this Agreement. The special reserve shall be held in such liquid form as the Board of Directors may decide.

Article 18

Methods of meeting liabilities of the Bank

1. In cases of default on loans made, participated in or guaranteed by the Bank in its ordinary operations, the Bank shall take such action as it deems appropriate with respect to modifying the terms of the loan, other than the currency of repayment.

2. The payments in discharge of the Bank's liabilities on borrowings or guarantees under sub-paragraphs (ii) and (iv) of Article 11 cargeable to the ordinary capital resources shall be charged:

(i) First, against the special reserve provided for in Article 17;

(ii) Then, to the extent necessary and at the discretion of the Bank, against the other reserves, surplus and capital available to the Bank.

3. Whenever necessary to meet contractual payments of interest, other charges or amortization on borrowings of the Bank in its ordinary operations, or to meet its liabilities with respect to similar payments in respect of loans guaranteed by it, chargeable to its ordinary capital resources, the Bank may call an appropriate amount of the uncalled subscribed callable capital in accordance with paragraphs 6 and 7 of Article 6 of this Agreement.

4. In cases of default in respect of a loan made from borrowed funds or guaranteed by the Bank as part of its ordinary operations, the Bank may, if it believes that the default may be of long duration, call an additional amount of such callable capital not to exceed in any one (1) year one (1) per cent of the total subscriptions of the members to such capital, for the following purposes:

(i) To redeem before maturity, or otherwise discharge, the Bank's liability on all or part of

the outstanding principal of any loan guaranteed by it in respect of which the debtor is in default; and

(ii) To repurchase, or otherwise discharge, the Bank's liability on all or part of its own outstanding borrowing.

5. If the Bank's subscribed callable capital stock shall be entirely called pursuant to paragraphs 3 and 4 of this Article, the Bank may, if necessary for the purposes specified in paragraph 3 of this Article, use or exchange the currency of any member without restriction, including any restriction imposed pursuant to paragraphs 2 (i) and (ii) of Article 24.

Article 19

Special Funds

1. The Bank may:

(i) set aside, by a vote of two-thirds of the total number of Governors, representing at least three-fourths of the total voting power of the members, not more than ten (10) per cent each of the portion of the unimpaired paid-in capital of the Bank paid by members pursuant to paragraph 2 (*a*) of Article 6 and of the portion thereof paid pursuant to paragraph 2 (*b*) of Article 6, and establish therewith one or more Special Funds; and

(ii) accept the administration of Special Funds which are designed to serve the purpose and come within the fuctions of the Bank.

2. Special Funds established by the Bank pursuant to paragraph 1 (i) of this Article may be used to guarantee or make loans of high developmental priority, with longer maturities, longer deferred commencement of repayment and lower interest rates than those established by the Bank for its ordinary operations. Such Funds may also be used on such other terms and conditions, not inconsistent with the applicable provisions of this Agreement nor with the character of such Funds as revolving funds, as the Bank in establishing such Funds may direct.

3. Special Funds accepted by the Bank under paragraph 1 (ii) of this Article may be used in any manner and on any terms and conditions not inconsistent with the purpose of the Bank and with the agreement relating to such Funds.

4. The Bank shall adopt such special rules and regulations as may be required for the establishment, administration and use of each Special Fund. Such rules and regulations shall be consistent with the provisions of this Agreement, excepting those provisions expressly applicable only to ordinary operations of the Bank.

Article 20

Special Funds resources

As used in this Agreement, the term « Special Funds resources » shall refer to the resources of any Special Fund and shall include:

(*a*) resources set aside from the paid-in capital to a Special Fund or otherwise initially contributed to any Special Fund;

(*b*) funds accepted by the Bank for inclusion in any Special Fund;

(*c*) funds repaid in respect of loans or guarantees financed from the resources of any Special Fund which, under the rules and regulations of the Bank governing that Special Fund, are received by such Special Fund;

(*d*) income derived from operations of the Bank in which any of the aforementioned resources or funds are used or committed if, under the rules and regulations of the Bank governing the Special Fund concerned, that income accrues to such Special Fund; and

(*e*) any other resources placed at the disposal of any Special Fund.

CHAPTER IV. — BORROWING AND OTHER MISCELLANEOUS POWERS

Article 21

General powers

In addition to the powers specified elsewhere in this Agreement, the Bank shall have the power to:

(i) borrow funds in member countries or elsewhere, and in this connexion to furnish such collateral or other security therefor as the Bank shall determine, provided always that:

(*a*) before making a sale of its obligations in the territory of a country, the Bank shall have obtained its approval;

(*b*) where the obligations of the Bank are to be denominated in the currency of a member, the Bank shall have obtained its approval;

(*c*) the Bank shall obtain the approval of the countries referred to in sub-paragraphs (*a*) and (*b*) of this paragraph that the proceeds may be exchanged for the currency of any member without restriction; and

(*d*) before determining to sell its obligations in a particular country, the Bank shall consider the amount of previous borrowing, if any, in that country, the amount of previous borrowing in other countries, and the possible availability of funds in such other countries; and shall give due regard to the general principle that its borrowings should to the greatest extent possible be diversified as to country of borrowing;

(ii) buy and sell securities the Bank has issued or guaranteed or in which it has invested, provided always that it shall have obtained the approval of any country in whose territory the securities are to be bought or sold;

(iii) guarantee securities in which it has invested in order to facilitate their sale;

(iv) underwrite, or participate in the underwriting of, securities issued by any entity or enterprise for purposes consistent with the purpose of the Bank;

(v) invest funds, not needed in its operations, in the territories of members in such obligations of members or nationals thereof as it may determine, and invest funds held by the Bank for pensions or similar purposes in the territories of members in marketable securities issued by members or nationals thereof;

(vi) provide technical advice and assistance which serv its purpose and come within its functions, and where expenditures incurred in furnishing such services are not reimbursable, charge the net income of the Bank therewith; in the first five (5) years of its operations, the Bank may use up to two (2) per cent of its paid-in capital for furnishing such services on a non-reimbursable basis; and

(vii) exercise such other powers and establish such rules and regulations as may be necessary or appropriate in furtherance of its purpose and functions, consistent with the provisions of this Agreement.

Article 22

Notice to be placed on securities

Every security issued or guaranteed by the Bank shall bear on its face a conspicuous statement to the effect that it is not an obligation of any Government, unless it is in fact the obligation of a particular Government, in which case it shall so state.

CHAPTER V. — CURRENCIES

Article 23

Determination of convertibility

Whenever it shall become necessary under this Agreement to determine whether any currency is convertible, such determination shall be made by the Bank after consultation with the International Monetary Fund.

Article 24

Use of currencies

1. Members may not maintain or impose any restrictions on the holding or use by the Bank or by any recipient from the Bank, for payments in any country, of the following:

(i) gold or convertible currencies received by the Bank in payment of subscriptions to its capital stock, other than that paid to the Bank by members pursuant to paragraph 2 (*b*) of Article 6 and restricted pursuant to paragraphs 2 (i) and (ii) of this Article;

(ii) currencies of members purchased with the gold or convertible currencies referred to in the preceding sub-paragraph;

(iii) currencies obtained by the Bank by borrowing, pursuant to sub-paragraph (i) of Article 21 of this Agreement, for inclusion in its ordinary capital resources;

(iv) gold or currencies received by the Bank in payment on account of principal, interest dividends or other charges in respect of loans or investments made out of any of the funds referred to in sub-paragraphs (i) to (iii) of this paragraph or in payment of fees in respect of guarantees made by the Bank; and

(v) currencies, other than the member's own currency, received by the member from the Bank in distribution of the net income of the Bank in accordance with Article 40 of this Agreement.

2. Members may not maintain or impose any restriction on the holding or use by the Bank or by any recipient from the Bank, for payments in any country, of currency of a member received by the Bank which does not come within the provisions of the preceding paragraph, unless:

(i) a developing member country, after consultation with and subject to periodic review by the Bank, restricts in whole or in part the use of such currency to payments for goods or services produced and intended for use in its territory; or

(ii) any other member whose subscription has been determined in Part A of Annex A hereof and whose exports of industrial products do not represent a substantial proportion of its total exports, deposits with its instrument of ratification or acceptance a declaration that it desires the use of the portion of its subscription paid pursuant to paragraph 2 (*b*) of Article 6 to be restricted, in whole or in part, to payments for goods or services produced in its territory; provided that such restrictions be subject to periodic review by and consultation with the Bank and that any purchases of goods or services in the territory of that member, subject to the usual consideration of competitive tendering, shall be first charged against the portion of its subscription paid pursuant to paragraph 2 (*b*) of Article 6; or

(iii) such currency forms part of the Special Funds resources of the Bank available under paragraph 1 (ii) of Article 19 and its use is subject to special rules and regulations.

3. Members may not maintain or impose any restrictions on the holding or use by the Bank, for making amortization payments or anticipatory payments or for repurchasing in whole or in part the Bank's own obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources, provided, however, that until the Bank's subscribed callable capital stock has been entirely called, such holding or use shall be subject to any limitations imposed pursuant to paragraph 2 (i) of this Article except in respect of obligations payable in the currency of the member concerned.

4 Gold or currencies held by the Bank shall not be used by the Bank to purchase other currencies of members or non-members except:

(i) in order to meet its obligations in the ordinary course of its business; or

(ii) pursuant to a decision of the Board of Directors adopted by a vote of the Directors representing not less than two-thirds of the total voting power of the members.

5. Nothing herein contained shall prevent the Bank from using the currency of any member for administrative expenses incurred by the Bank in the territory of such member.

Article 25

Maintenance of value of the currency holdings of the Bank

1. Whenever (a) the par value in the International Monetary Fund of the currency of a member is reduced in terms of the dollar defined in Article 4 of this Agreement, or (b) in the opinion of the Bank, after consultation with the International Monetary Fund, the foreign exchange value of a member's currency has depreciated to a significant extent, that member shall pay to the Bank within a reasonable time an additional amount of its currency required to maintain the value of all such currency held by the Bank, excepting (a) currency derived by the Bank from its borrowings and (b) unless otherwise provided in the agreement establishing such Funds, Special Funds resources accepted by the Bank under paragraph 1 (ii) of Article 19.

2. Whenever (a) the par value in the International Monetary Fund of the currency of a member is increased in terms of the said dollar, or (b) in the opinion of the Bank, after consultation with the International Monetary Fund, the foreign exchange value of a member's currency has appreciated to a significant extent, the Bank shall pay to the member within a reasonable time an amount of that currency required to adjust the value of all such currency held by the Bank excepting (a) currency derived by the Bank from its borrowings, and (b) unless otherwise provided in the agreement establishing such Funds, Special Funds resources accepted by the Bank under paragraph 1 (ii) of Article 19.

3. The Bank may waive the provisions of this Article when a uniform proportionate change in the par value of the currencies of all its members takes place.

CHAPTER VI. — ORGANIZATION AND MANAGEMENT

Article 26

Structure

The Bank shall have a Board of Governors, a Board of Directors, a President, one or more Vice-Presidents and such other officers and staff as may be considered necessary.

Article 27

Board of Governors: composition

1. Each member shall be represented on the Board of Governors and shall appoint one Governor and one alternate. Each Governor and alternate shall serve at the pleasure of the appointing member. No alternate may vote except in the absence of his principal. At its annual meeting, the Board shall designate one of the Governors as Chairman who shall hold office until the election of the next Chairman and the next annual meeting of the Board.

2. Governors and alternates shall serve as such without remuneration from the Bank, but the Bank may pay them reasonable expenses incurred in attending meetings.

Article 28

Board of Governors: powers

1. All the powers of the Bank shall be vested in the Board of Governors.

2. The Board of Governors may delegate to the Board of Directors any or all its powers, except the power to:

(i) admit new members and determine the conditions of their admission;

(ii) increase or decrease the authorized capital stock of the Bank;

(iii) suspend a member;

(iv) decide appeals from interpretations or applications of this Agreement given by the Board of Directors;

(v) authorize the conclusion of general agreements for co-operation with other international organizations;

(vi) elect the Directors and the President of the Bank;

(vii) determine the remuneration of the Directors and their alternates and the salary and other terms of the contract of service of the President;

(viii) approve, after reviewing the auditors' report, the general balance sheet and the statement of profit and loss of the Bank;

(ix) determine the reserves and the distribution of the net profits of the Bank;

(x) amend this Agreement;

(xi) decide to terminate the operations of the Bank and to distribute its assets; and

(xii) exercise such other powers as are expressly assigned to the Board of Governors in this Agreement.

3. The Board of Governors shall retain full power to exercise authority over any matter delegated to the Board of Directors under paragraph 2 of this Article.

4. For the purposes of this Agreement, the Board of Governors may, by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members, from time to time determine which countries or members of the Bank are to be regarded as developed or developing countries or members, taking into account appropriate economic considerations.

Article 29

Board of Governors: procedure

1. The Board of Governors shall hold an annual meeting and such other meetings as may be provided for by the Board or called by the Board of Directors. Meetings of the Board of Governors shall be called, by the Board of Directors, whenever requested by five (5) members of the Bank.

2. A majority of the Governors shall constitute a quorum for any meeting of the Board of Governors, provided such majority represents not less than two-thirds of the total voting power of the members.

3. The Board of Governors may by regulation establish a procedure whereby the Board of Directors may,

when the latter deems such action advisable, obtain a vote of the Governors on a specific question without calling a meeting of the Board of Governors.

4. The Board of Governors, and the Board of Directors to the extent authorized, may establish such subsidiary bodies as may be necessary or appropriate to conduct the business of the Bank.

Article 30
Board of Directors: composition

1. (i) The Board of Directors shall be composed of ten (10) members who shall not be members of the Board of Governors, and of whom:

(a) seven (7) shall be elected by the Governors representing regional members; and

(b) three (3) by the Governors representing non-regional members. Directors shall be persons of high competence in economic and financial matters and shall be elected in accordance with Annex B hereof.

(ii) At the Second Annual Meeting of the Board of Governors after its inaugural meeting, the Board of Governors shall review the size and composition of the Board of Directors, and shall increase the number of Directors as appropriate, paying special regard to the desirability, in the circumstances at that time, of increasing representation in the Board of Directors of smaller less developed member countries. Decisions under this paragraph should be made by a vote of majority of the total number of Governors, representing not less than two-thirds of the total voting power of the members.

2. Each Director shall appoint an alternate with full power to act for him when he is not present. Directors and alternates shall be nationals of member countries. No two or more Directors may be of the same nationality nor may any two or more alternates be of the same nationality. An alternate may participate in meetings of the Board but may vote only when he is acting in place of his principal.

3. Directors shall hold office for a term of two (2) years and may be reelected. They shall continue in office until their successors shall have been chosen and qualified. If the office of a Director becomes vacant more than one hundred and eighty (180) days before the end of his term, a successor shall be chosen in accordance with Annex B hereof, for the remainder of the term, by the Governors who elected the former Director. A majority of the votes cast by such Governors shall be required for such election. If the office of a Director becomes vacant one hundred and eighty (180) days or less before the end of his term, a successor may similarly be chosen for the remainder of the term, by the Governors who elected the former Director, in which election a majority of the votes cast by such Governors shall be required. While the office remains vacant, the alternate of the former Director shall exercise the powers of the latter, except that of appointing an alternate.

Article 31
Board of Directors: powers

The Board of Directors shall be responsible for the direction of the general operations of the Bank and, for this purpose, shall, in addition to the powers assigned to it expressly by this Agreement, exercise all the powers delegated to it by the Board of Governors, and in particular:

(i) prepare the work of the Board of Governors;

(ii) in conformity with the general directions of the Board of Governors, take decisions concerning loans, guarantees, investments in equity capital, borrowing by the Bank, furnishing of technical assistance and other operations of the Bank;

(iii) submit the accounts for each financial year for approval of the Board of Governors at each annual meeting; and

(iv) approve the budget of the Bank.

Article 32
Board of Directors: procedure

1. The Board of Directors shall normally function at the principal office of the Bank and shall meet as often as the business of the Bank may require.

2. A majority of the Directors shall constitute a quorum for any meeting of the Board of Directors, provided such majority represents not less than two thirds of the total voting power of the members.

3. The Board of Governors shall adopt regulations under which, if there is no Director of its nationality, a member may send a representative to attend, without right to vote, any meeting of the Board of Directors when a matter particularly affecting that member is under consideration.

Article 33
Voting

1. The total voting power of each member shall consist of the sum of its basic votes and proportional votes.

(i) The basic votes of each member shall consist of such number of votes as results from the equal distribution among all the members of twenty (20) per cent of the aggregate sum of the basic votes and proportional votes of all the members.

(ii) The number of the proportional votes of each member shall be equal to the number of shares of the capital stock of the Bank held by that member.

2. In voting in the Board of Governors, each Governor shall be entitled to cast the votes of the member he represents. Except as otherwise expressly provided in this Agreement, all matters before the Board of Governors shall be decided by a majority of the voting power represented at the meeting.

3. In voting in the Board of Directors, each Director shall be entitled to cast the number of votes that counted towards his election which votes need not be cast as a unit. Except as otherwise expressly provided in this Agreement, all matters before the Board of Directors shall be decided by a majority of the voting power represented at the meeting.

Article 34

The President

1. The Board of Governors, by a vote of a majority of the total number of Governors, representing not less than a majority of the total voting power of the members, shall elect a President of the Bank. He shall be a national of a regional member country. The President, while holding office, shall not be a Governor or a Director or an alternate fro either.

2. The term of office of the President shall be five (5) years. He may be re-elected. He shall, however, cease to hold office when the Board of Governors so decides by a vote of two-thirds of the total number of Governors, representing not less than two-thirds of the total voting power of the members. If the office of the President for any reason becomes vacant more than one hundred and eighty (180) days before the end of his term, a successor shall be elected for the unexpired portion of such term by the Board of Governors in accordance with the provisions of paragraph 1 of this Article. If such office for any reason becomes vacant one hundred and eighty (180) days or less before the end of the term, a successor may similarly be elected for the unexpired portion of such term by the Board of Governors.

3. The President shall be Chairman of the Board of Directors but shall have no vote, except a deciding vote in case of an equal division. He may participate in meetings of the Board of Governors but shall not vote.

4. The President shall be the legal representative of the Bank.

5. The President shall be chief of the staff of the Bank and shall conduct, under the direction of the Board of Directors, the current business of the Bank. He shall be responsible for the organization, appointment and dismissal of the officers and staff in accordance with regulations adopted by the Board of Directors.

6. In appointing the officers and staff, the President shall, subject to the paramount importance of securing the highest standards of efficiency and technical competence, pay due regard to the recruitment of personnel on as wide a regional geographical basis as possible.

Article 35

Vice-President(s)

1. One or more Vice-Presidents shall be appointed by the Board of Directors on the recommendation of the President. Vice-President(s) shall hold office for such term, exercise such authority and perform such functions in the administration of the Bank, as may be determined by the Board of Directors. In the absence or incapacity of the President, the Vice-President or, if there be more than one, the ranking Vice-President, shall exercise the authority and perform the functions of the President.

2. Vice-President(s) may participate in meetings of the Board of Directors but shall have no vote at such meetings, except that the Vice-President or ranking Vice-President, as the case may be, shall cast the deciding vote when acting in place of the President.

Article 36

Prohibition of political activity: the international character of the Bank

1. The Bank shall not accept loans or assistance that may in any way prejudice, limit, deflect or otherwise alter its purpose or functions.

2. The Bank, its President, Vice-President(s), officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations shall be relevant to their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.

3. The President, Vice-President(s), officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.

Article 37

Office of the Bank

1. The principal office of the Bank shall be located in Manila, Philippines.

2. The Bank may establish agencies or branch offices elsewhere.

Article 38

Channel of communications, depositories

1. Each member shall designate an appropriate official entity with which the Bank may communicate in connexion with any matter arising under this Agreement.

2. Each member shall designate its central bank, or such other agency as may be agreed upon with the Bank, as a depository with which the Bank may keep its holdings of currency of that member as well as other assets of the Bank.

Article 39

Working language, reports

1. The working language of the Bank shall be English.

2. The Bank shall transmit to its members an Annual Report containing an audited statement of its accounts and shall publish such Report. It shall also transmit quarterly to its members a summary statement of its financial position and a profit and loss statement showing the results of its operations.

3. The Bank may also publish such other reports as it deems desirable in the carrying out of its purpose and functions. Such reports shall be transmitted to the members of the Bank.

Article 40

Allocation of net income

1. The Board of Governors shall determine annually what part of the net income of the Bank, including the net income accruing to Special Funds, shall be

allocated, after making provision for reserves, to surplus and what part, if any, shall be distributed to the members.

2. The distribution referred to in the preceding paragraph shall be made in proportion to the number of shares held by each member.

3. Payments shall be made in such manner and in such currency as the Board of Governors shall determine.

CHAPTER VII. — WITHDRAWAL AND SUSPENSION OF MEMBERS, TEMPORARY SUSPENSION AND TERMINATION OF OPERATIONS OF THE BANK

Article 41
Withdrawal

1. Any member may withdraw from the Bank at any time by delivering a notice in writing to the Bank at its principal office.

2. Withdrawal by a member shall become effective, and its membership shall cease, on the date specified in its notice but in no event less than six (6) months after the date that notice has been received by the Bank. However, at any time before the withdrawal becomes finally effective, the member may notify the Bank in writing of the cancellation of its notice of intention to withdraw.

3. A withdrawing member shall remain liable for all direct and contingent obligations to the Bank to which it was subject at the date of delivery of the withdrawal notice. If the withdrawal becomes finally effective, the member shall not incur any liability for obligations resulting from operations of the Bank effected after the date on which the withdrawal notice was received by the Bank.

Article 42
Suspension of membership

1. If a member fails to fulfil any of its obligations to the Bank, the Board of Governors may suspend such member by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.

2. The member so suspended shall automatically cease to be a member of the Bank one (1) year from the date of its suspension unless the Board of Governors, during that one-year period, decides by the same majority necessary for suspension to restore the member to good standing.

3. While under suspension, a member shall not be entitled to exercise any rights under this Agreement, except the right of withdrawal, but shall remain subject to all its obligations.

Article 43
Settlement of accounts

1. After the date on which a country ceases to be a member, it shall remain liable for its direct obligations to the Bank and for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted before it ceased to be a member is outstanding; but it shall not incur liabilities with respect to loans and guarantees entered into thereafter by the Bank nor share either in the income or the expenses of the Bank.

2. At the time a country ceases to be a member, the Bank shall arrange for the repurchase of such country's shares by the Bank as a part of the settlement of accounts with such country in accordance with the provisions of paragraphs 3 and 4 of this Article. For this pourpose, the repurchase price of the shares shall be the value shown by the books of the Bank on the date the country ceases to be a member.

3. The payment for shares repurchased by the Bank under this Article shall be governed by the following conditions:

(i) Any amount due to the country concerned for its shares shall be withheld so long as that country, its central bank or any of its agencies, instrumentalities or political subdivisions remains liable, as borrower or guarantor, to the Bank and such amount may, at the option of the Bank, be applied on any such liability as it matures. No amount shall be withheld on account of the contingent liability of the country for future calls on its subscription for shares in accordance with paragraph 5 of Article 6 of this Agreement. In any event, no amount due to a member for its shares shall be paid until six (6) months after the date on which the country ceases to be a member.

(ii) Payments for shares may be made from time to time, upon surrender of the corresponding stock certificates by the country concerned, to the extent by which the amount due as the repurchase price in accordance with paragraph 2 of this Article exceeds the aggregate amount of liabilities on loans and guarantees referred to in sub-paragraph (i) of this paragraph, until the former member has received the full repurchase price.

(iii) Payments shall be made in such available currencies as the Bank determines, taking into account its financial position.

(iv) If losses are sustained by the Bank on any guarantees or loans which were outstanding on the date when a country ceased to be a member and the amount of such losses exceeds the amount of the reserve provided against losses on that date, the country concerned shall repay, upon demand, the amount by which the repurchase price of its shares would have been reduced if the losses had been taken into account when the repurchase price was determined. In addition, the former member shall remain liable on any call for unpaid subscriptions in accordance with paragraph 5 of Article 6 of this Agreement, to the same extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares was determined.

4. If the Bank terminates its operations pursuant to Article 45 of this Agreement within six (6) months of the date upon which any country ceases to be a member, all rights of the country concerned shall be deter-

mined in accordance with the provisions of Articles 45 to 47 of this Agreement. Such country shall be considered as still a member for purposes of such Articles but shall have no voting rights.

Article 44

Temporary suspension of operations

In an emergency, the Board of Directors may temporarily suspend operations in respect of new loans and guarantees, pending an opportunity for further consideration and action by the Board of Governors.

Article 45

Termination of operations

1. The Bank may terminate its operations by a resolution of the Board of Governors approved by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.

2. After such termination, the Bank shall forthwith cease all activities, except those incident to the orderly realization, conservation and preservation of its assets and settlement of its obligations.

Article 46

Liability of members and payment of claims

1. In the event of termination of the operations of the Bank, the liability of all members for uncalled subscriptions to the capital stock of the Bank and in respect of the depreciation of their currencies shall continue until all claims of creditors, including all contingent claims, shall have been discharged.

2. All creditors holding direct claims shall first be paid out of the assets of the Bank and then out of payments to the Bank on unpaid or callable subscriptions. Before making any payments to creditors holding direct claims, the Board of Directors shall make such arrangements as are necessary, in its judgment, to ensure a *pro rata* distribution among holders of direct and contingent claims.

Article 47

Distribution of assets

1. No distribution of assets shall be made to members on account of their subscriptions to the capital stock of the Bank until all liabilities to creditors shall have been discharged or provided for. Moreover, such distribution must be approved by the Board of Governors by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.

2. Any distribution of the assets of the Bank to the members shall be in proportion to the capital stock held by each member and shall be effected at such times and under such conditions as the Bank shall deem fair and equitable. The shares of assets distributed need not be uniform as to type of asset. No member shall be entitled to receive its share in such a distribution of assets until it has settled all of its obligations to the Bank.

3. Any member receiving assets distributed pursuant to this Article shall enjoy the same rights with respect to such assets as the Bank enjoyed prior to their distribution.

CHAPTER VIII. — STATUS, IMMUNITIES, EXEMPTIONS AND PRIVILEGES

Article 48

Purpose of chapter

To enable the Bank effectively to fulfil its purpose and carry out the functions entrusted to it, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in the territory of each member.

Article 49

Legal status

The Bank shall possess full juridical personality and, in particular, full capacity:

(i) to contract;
(ii) to acquire, and dispose of immovable and movable property; and
(iii) to institute legal proceedings.

Article 50

Immunity from judicial proceedings

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connexion with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in contracts entered into with the Bank.

3. Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 51

Immunity of assets

Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

Article 52

Immunity of archives

The archives of the Bank and, in general, all documents belonging to it, or held by it, shall be inviolable, wherever located.

Article 53

Freedom of assets from restrictions

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 54

Privilege for communications

Official communications of the Bank shall be accorded by each member treatment not less favourable than that it accords to the official communications of any other member.

Article 55

Immunities and privileges of Bank personnel

All Governors, Directors, alternates, officers and employees of the Bank, including experts performing missions for the Bank:

(i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity;

(ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Article 56

Exemption from taxation

1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2. No tax shall be levied on or in respech of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Article 57

Implementation

Each member, in accordance with its juridical system, shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in this Chapter and shall inform the Bank of the action which it has taken on the matter.

Article 58

Waiver of immunities, exemptions and privileges

The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

Chapter IX. — AMENDMENTS, INTERPRETATION, ARBITRATION

Article 59

Amendments

1. Tis Agreement may be amended only by a resolution of the Board of Governors approved by a vote of two-thirds of the total number of Governors, representing not less than three-fourths of the total voting power of the members.

2. Notwithstanding the provisions of paragraph 1 of this Article, the unanimous agreement of the Board of Governors shall be required for the approval of any amendment modifying:

(i) the right to withdraw from the Bank;

(ii) the limitations on liability provided in paragraphs 6 and 7 of Article 5; and

(iii) the rights pertaining to purchase of capital stock provided in paragraph 2 of Article 5.

3. Any proposal to amend this Agreement, whether emanating from a member of the Board of Directors, shall be communicated to the Chairman of the Board of Governors, who shall bring the proposal before the Board of Governors. When an amendment has been adopted, the Bank shall so certify in an official communication addressed to all members. Amendments shall enter into force for all members three (3) months after the date of the official communication unless the Board of Governors specifies therein a different period.

Article 60

Interpretation or application

1. Any question of interpretation or application of the provisions of this Agreement arising between any member and the Bank, or between two or more members of the Bank, shall be submitted to the Board of Directors for decision. If there is no Director of its nationality on that Board, a member particularly affected by the question under consideration shall be entitled to direct representation in the Board of Directors during such consideration; the representative of such member shall, however, have no vote. Such right of representation shall be regulated by the Board of Governors.

2. In any case where the Board of Directors has given a decision under paragraph 1 of this Article, any member may require that the question be referred to the Board of Governors, whose decision shall be final. Pending the decision of the Board of Governors, the Bank may, so far as it deems it necessary, act on the basis of the decision of the Board of Directors.

Article 61

Arbitration

If a disagreement should arise between the Bank and a country which has ceased to be a member, or between the Bank and any member, after adoption of a resolution to terminate the operations of the Bank, such disagreement shall be submitted to arbitration by a tribunal of three arbitrators. One of the arbitrators shall be appointed by the Bank, another by the country concerned, and the third, unless the parties otherwise agree, by the President of the International Court of Justice or such other authority as may have been prescribed by regulations adopted by the Board of Governors. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding upon the parties. The third arbitrator shall be empowered to settle all questions of procedure in any case where the parties are in disagreement with respect thereto.

Article 62

Approval deemed given

Whenever the approval of any member is required before any act may be done by the Bank, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Bank may fix in notifying the member of the proposed act.

Chapter X. — FINAL PROVISIONS

Article 63

Signature and deposit

1. The original of this Agreement in a single copy in the English language shall remain open for signature at the United Nations Economic Commission for Asia and the Far East, in Bangkok, until 31 January 1966 by Governments of countries listed in Annex A to this Agreement. This document shall thereafter be deposited with the Secretary-General of the United Nations (hereinafter called the « Depository »).

2. The Depository shall send certified copies of this Agreement to all the Signatories and other countries which become members of the Bank.

Article 64

Ratification or acceptance

1. This Agreement shall be subject to ratification or acceptance by the Signatories. Instruments of ratification or acceptance shall be deposited with the Depository not later than 30 September 1966. The Depository shall duly notify the other Signatories of each deposit and the date thereof.

2. A Signatory whose instrument of ratification or acceptance is deposited before the date on which this Agreement enters into force, shall become a member of the Bank on that date. Any other Signatory which complies with the provisions of the preceding paragraph, shall become a member of the Bank on the date on which its instrument of ratification or acceptance is deposited.

Article 65

Entry into force

This Agreement shall enter into force when instruments of ratification or acceptance have been deposited by at least fifteen (15) Signatories (including not less than ten [10] regional countries) whose initial subscriptions, as set forth in Annex A to this Agreement, in the aggregate comprise not less than sixty-five (65) per cent of the authorized capital stock of the Bank.

Article 66

Commencement of operations

1. As soon as this Agreement enters into force, each member shall appoint a Governor, and the Executive Secretary of the United Nations Economic Commission for Asia and the Far East shall call the inaugural meeting of the Board of Governors.

2. At its inaugural meeting, the Board of Governors:

(i) shall make arrangements for the election of Directors of the Bank in accordance with paragraph 1 of Article 30 of this Agreement; and

(ii) shall make arrangements for the determination of the date on which the Bank shall commence its operations.

3. The Bank shall notify its members of the date of the commencement of its operations.

Done at the City of Manila, Philippines, on 4 December 1965, in a single copy in the English language which shall be brought to the United Nations Economic Commission for Asia and the Far East, Bangkok, and thereafter deposited with the Secretary-General of the United Nations, New York, in accordance with Article 63 of this Agreement.

ANNEX *A*

INITIAL SUBSCRIPTIONS TO THE AUTHORIZED CAPITAL STOCK FOR COUNTRIES WHICH MAY BECOME MEMBERS IN ACCORDANCE WITH ARTICLE 64

Part A. Regional Countries

I

Country	Amount of subscription (in million US dollars)
1. Afghanistan	3.36
2. Australia	85.00
3. Cambodia	3.00
4. Ceylon	8.52
5. China, Republic of	16.00
6. India	93.00
7. Iran	60.00
8. Japan	200.00
9. Korea, Republic of	30.00
10. Laos	0.42
11. Malaysia	20.00
12. Nepal	2.16
13. New Zealand	22.56
14. Pakistan	32.00
15. Philippines	35.00
16. Republic of Viet-Nam	7.00
17. Singapore	4.00
18. Thailand	20.00
19. Western Samoa	0.06
Total . . .	642.08

II

The following regional countries may become Signatories of this Agreement in accordance with Article 63, provided that at the time of signing, they shall respectively subscribe to the capital stock of the Bank in the following amounts:

Country	Amount of subscription (in million US dollars)
1. Burma	7.74
2. Mongolia	0.18
Total . . .	7.92

Part B. Non-regional countries

Country	Amount of subscription (in million US dollars)
1. Belgium	5.00
2. Canada	25.00
3. Denmark	5.00
4. Germany, Federal Republic of	30.00
5. Italy	10.00
6. Netherlands	11.00
7. United Kingdom	10.00
8. United States	200.00
Total . . .	296.00

II

The following non-regional countries which participated in the meeting of the Preparatory Committee on the Asian Development Bank in Bangkok from 21 October to 1 November 1965 and which there indicated interest in membership in the Bank, may become Signatories of this Agreement in accordance with Article 63, provided that at the time of signing, each such country shall subscribe to the capital stock of the Bank in an amount which shall not be less than five million dollars ($ 5,000,000):

1. Austria
2. Finland
3. Norway
4. Sweden

III

On or before 31 January 1966, any of the non-regional countries listed in Part B (1) of this Annex may increase the amount of its subscription by so informing the Executive Secretary of the United Nations Economic Commission for Asia and the Far East in Bangkok, provided, however, that the total amount of the initial subscriptions of the non-regional countries listed in Part B (I) and (II) of this Annex shall not exceed the amount of three hundred and fifty million dollars ($ 350,000,000).

ANNEX B

ELECTION OF DIRECTORS

Section A. Election of Directors by Governors representing regional members

(1) Each Governor representing a regional member shall cast all votes of the member he represents for a single person.

(2) The seven (7) persons receiving the highest number of votes shall be Directors, except that no person who receives less than ten (10) per cent of the total voting power of regional members shall be considered as elected.

(3) If seven (7) persons are not elected at the first ballot, a second ballot shall be held in which the person who received the lowest number of votes in the preceding ballot shall be ineligible and in which votes shall be cast only by:

(a) Governors who voted in the preceding ballot for a person who is not elected; and

(b) Governors whose votes for a person who is elected are deemed, in accordance with paragraphe 4 of this Section, to have raised the votes cast for that person above eleven (11) per cent of the total voting power of regional members.

(4) (a) In determining whether the votes cast by a Governor shall be deemed to have raised the total number of votes for any person above eleven (11) per cent, the said eleven (11) per cent shall be deemed to include, first, the votes of the Governor casting the highest number of votes for that person, and then in diminishing order, the votes of each Governor casting the next highest number until eleven (11) per cent is attained.

(b) Any Governor, part of whose votes must be counted in order to raise the votes cast for any person above ten (10) per cent, shall be considered as casting all his votes for that person even if the total number of votes cast for that person thereby exceeds eleven (11) per cent.

(5) If, after the second ballot, seven (7) persons are not elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, except that after six (6) persons are elected, the seventh may be elected—notwithstanding the provisions of paragraph (2) of this Section—by a simple majority of the remaining votes of regional members. All such remaining votes shall be deemed to have counted towards the election of the seventh Director.

(6) In case of an increase in the number of Directors to be elected by Governors representing regional members, the minimum and maximum percentages specified in paragraphs (2), (3) and (4) of Section A of this Annex shall be correspondingly adjusted by the Board of Governors.

Section B. Election of Directors
by Governors representing non-regional members

(1) Each Governor representing a non-regional member shall cast all votes of the member he represents for a single person.

(2) The three (3) persons receiving the highest number of votes shall be Directors, except that no person who receives less than twenty-five (25) per cent of the total voting power of non-regional members shall be considered as elected.

(3) If three (3) persons are not elected at the first ballot, a second ballot shall be held in which the person who received the lowest number of votes in the preceding ballot shall be ineligible and in which votes shall be cast only by:

(a) Governors who voted in the preceding ballot for a person who is not elected; and

(b) Governors whose votes for a person who is elected are deemed, in accordance with paragraph (4) of this Section, to have raised the votes cast for that person above twenty-six (26) per cent of the total voting power of non-regional members.

(4) (a) In determining whether the votes cast by a Governor shall be deemed to have raised the total number of votes for any person above twenty-six (26) per cent, the said twenty-six (26) per cent shall be deemed to include, first, the votes of the Governor casting the highest number of votes for that person, and then, in diminishing order, the votes of each Governor casting the next highest number until twenty-six (26) per cent is attained.

(b) Any Governor, part of whose votes must be counted in order to raise the votes cast for any person above twenty-six (26) per cent, shall be considered as casting all his votes for that person even if the total number of votes cast for that person thereby exceeds twenty-six (26) per cent.

(5) If, after the second ballot, three (3) persons are not elected, further ballots shall be held in conformity with the principles and procedures laid down in this Section, except that after two (2) persons are elected, a third may be elected—provided that subscriptions from non-regional members shall have reached a minimum total of $ 345 million, and notwithstanding the provisions of paragraph (2) of this Section—by a simple majority of the remaining votes. All such remaining votes shall be deemed to have counted towards the election of the third Director.

(6) In case of an increase in the number of directors to be elected by Governors representing non-regional members, the minimum and maximum percentages specified in paragraphs (2), (3) and (4) of Section B of this Annex shall be correspondingly adjusted by the Board of Governors.

For Afghanistan:

A. W. Haider
for Afghanistan

For Australia:

Paul Hasluck

For Belgium:

Jaques Groffen
31 January 1966.

For Burma:

For Mongolia:

For Nepal:

Nagendra Prasad Rijal

For the Netherlands:

For New Zealand:

D. W. A. Barker

For Pakistan:

For the Philippines:

For the Republic of Korea:

For the Republic of Viet-Nam:

January 28, 1966

For Singapore:

28. 1. 66.

For Thailand:

For the United Kingdom of Great Britain and Northern Ireland:

J. M. Addis

For the United States of America:

Eugene R Black

Joseph W. Barr